

**§ 40.22 Determination of sale price of large cigars.**

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases—(1) In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate TTB officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate TTB officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If TTB decides it is necessary, we will publish constructive sale price determinations in the TTB Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price—(i) Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of a TTB determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by TTB's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to

the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate TTB officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999, as amended by T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

**§ 40.23 Cigarette tax rates.**

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

## § 40.24

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes .....	\$19.50 .....	\$50.33
Large cigarettes up to 6½" long.	\$40.95 .....	\$105.69
Large cigarettes over 6½" long.	Taxed at the rate for small cigarettes, counting each 2¾" or fraction thereof of the length of each as one cigarette.	

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

### § 40.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

### § 40.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff .....	\$ 0.585 .....	\$ 1.51
Chewing tobacco .....	\$ 0.195 .....	\$ 0.5033

\* Prorate tax for fractions of a pound.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

### § 40.25a Pipe tobacco and roll-your-own tobacco tax rates and classification.

(a) *Tax rates.* Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco .....	\$ 1.0969 .....	\$ 2.8311
Roll-your-own tobacco ....	\$ 1.0969 .....	\$ 24.78

\* Prorate tax for fractions of a pound.

(b) *Classification.* (1) Pipe tobacco and roll-your-own tobacco, before removal subject to tax, must be put up in packages that conform to the requirements of §§ 40.211 and 40.212, and of § 40.216a or § 40.216b as appropriate.

(2) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, that does not bear the notice for smokeless

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tobacco prescribed in § 40.216 or the notice for pipe tobacco prescribed in § 40.216a is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco.

(3) Subject to paragraph (b)(4) of this section, any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco, even though the package bears the notice required for pipe tobacco under § 40.216a, if:

(i) The package does not bear the declaration "pipe tobacco" in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or

(ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco. (26 U.S.C. 5702 and 5723)

(4) During the period from June 22, 2009, through March 23, 2010, manufacturers may continue to remove products as pipe tobacco in packages that do not bear the declaration "pipe tobacco" in the manner prescribed in paragraph (b)(3)(i) of this section.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009, as amended by T.D. TTB-78, 74 FR 29408, June 22, 2009; T.D. TTB-81, 74 FR 48653, Sept. 24, 2009]

EFFECTIVE DATE NOTES: 1. By T.D. TTB-78, 74 FR 29408, June 22, 2009, § 40.25a was amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b), effective June 22, 2009 through June 22, 2012.

2. By T.D. TTB-81, 74 FR 48653, Sept. 24, 2009, § 40.25a(b)(3) was amended by removing the words "Any tobacco" and adding, in their place, the words "Subject to paragraph (b)(4) of this section, any tobacco", and a new paragraph (b)(4) was added, effective Sept. 24, 2009 through June 22, 2012.

### § 40.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on tobacco products by 26 U.S.C. 5701: *Provided*, That when tobacco products are transferred in bond pursuant to 26 U.S.C. 5704, to the bonded premises of another such manufacturer or